92-134

NO.

SUPREME COURT, U.S.
FILED
JUL 20 1992
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

ROLAND L. GOAD

Petitioner

v.

JOHN ANDREW ROLLINS, ET AL

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ROLAND L. GOAD, Petitioner
310 Sara Lane
Huntsville, Texas 77340
(409) 291-2430
(pro se)

20 July 1992

69 pp

QUESTIONS PRESENTED

1

Is a court of appeals authorized, under Rule 38 of the Federal Rules of Appellate Procedure, to dismiss a case before addressing any of the issues raised and briefed by the party prosecuting the appeal?

2

When an appeal has been dismissed as "frivolous", does Cooter & Gel v. Hartmarx Corp., 496 U.S. 384 (1990) permit remand to a district court for the determination of a proper monetary sanction to be imposed against the party that appealed the district judge's order or judgment?

3

Does Section 47 of the Judicial Code disqualify a trial judge from determining sanctions to be imposed on the party that has appealed that judge's order or judgment?

4

Does a court of appeals have authority to order all clerks of court to refuse to accept certain filings presented by an individual unless prior approval specifically authorizing the filing of the paper has been obtained from a federal judge?

5

Is a federal court permitted to enforce an award of monetary sanctions in favor of a group of private attorneys by directing the United States disbursing officer to deposit part of a service member's military pay into the registry of the district court?

PARTIES

Petitioner:

Roland L. Goad

Respondents:

Private attorneys:

John Andrew Rollins
Steven C. Haley
Pierce P. Stacy III
Alfred W. Davis
Alfred W. Davis III

Private citizen:

Elna P. Davis
Mary Beth Goad

Government unit:

Brazos County, Texas

County Officials:

John Delaney (judge)
Ron Miller (sheriff)
Allie Lewis (bailiff)
Leticia Wilkerson (jailer)
Ron Huddleston (jailer)
John Godfrey (jailer)
Charles R. Blondeau
(deputy sheriff)
Michael A. Fitzgerald
(jailer)
Bill Cooley (commissioner)
Walter Wilcox (commissioner)
Billy E. Beard (commissioner)
Milton Turner (commissioner).

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IN THE

SUPREME COURT OF THE UNITED STATES

NO.

ROLAND LEE GOAD, Petitioner,

versus

JOHN ANDREW ROLLINS, et al., Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Roland Lee Goad, the plaintiff and appellant in the proceedings below, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case. [Appendix A, infra].

CITATION TO OPINIONS BELOW

This civil rights case was initiated in the District Court for the Southern District of Texas, Houston Division, on September 8, 1986. The district court entered a final order dismissing this action on February 28, 1990 [App. H & I]. Petitioner timely appealed and presented eleven (11) issues for review. The Fifth Circuit dismissed the appeal as "patently frivolous" but failed to address any of the eleven issues presented in the appeal. [App. C]. The Court of Appeals ordered sanctions to be imposed against Petitioner under F.R.A.P. 38 but remanded the case to the district court for a determination of the amount. [App. F]. Certiorari was denied. Goad v. Rollins, 111 S.Ct. 1684 (1991). On remand, the district court imposed sanctions in the amount of $122,073.81 against Petitioner and ordered the United States to withhold

$400 from Petitioner's salary each month and deposit same in the registry of the court until the full $122,073.81 plus interest was paid. [App. D, p. 14a]. Second appeal was brought in which Petitioner presented ten (10) issues for review [App. J, p. 33a]. In large measure, these ten issues tracked the eleven issues presented in the first appeal and ignored by the court of appeals. The Fifth Circuit affirmed the district court's sanction order [App. A, p. 1a] but without addressing any of the ten issues presented in the appeal. Petition for rehearing was denied on June 8, 1992 [App. B].

Petitioner requests this Court to issue a writ of certiorari to the United States Court of Appeals for the Fifth Circuit for the purpose of reviewing this case to determine if the decision below should be reversed.

JURISDICTION IN THIS COURT

On April 30, 1992 the United States Court of Appeals for the Fifth Circuit disposed of Petitioner's timely appeal by affirming the district court's supplemental order. [App. A]. Petition for rehearing was denied on June 8, 1992. This petition will be filed with the Clerk before the expiration of 90 days from June 8, 1992; and this Court's jurisdiction to consider this petition is invoked pursuant to the provisions of Section 1254(1) of Title 28, United States Code.

JURISDICTION IN THE DISTRICT COURT

The district court's jurisdiction to consider this case was invoked pursuant to Sections 1331 and 1343 of Title 28, United States Code.

JURISDICTION IN THE COURT OF APPEALS

Jurisdiction in the United States Court of Appeals for the Fifth Circuit was invoked under Section 1291 of Title 28, United States Code.

STATUTES INVOLVED

28 U.S.C. § 47 Disqualification of trial judge to hear appeal

No judge shall hear or determine an appeal from the decision of a case or issue tried by him.

28 U.S.C. § 452 Courts always open; powers unrestricted by expiration of sessions

All courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders.

The continued existence or expiration of a session of court in no way effects the power of the court to do any act or take any proceeding.

28 U.S.C. § 957 Clerks ineligible for certain offices

A clerk of a court or any of his deputies shall not be appointed a commissioner, master, referee or receiver in any case, unless there are special reasons requiring such appointment which are recited in the order of appointment.

28 U.S.C. § 1254(1) Courts of appeals; certiorari, certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of the party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S.C. § 1291 Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

28 U.S.C. § 1331 Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1912 Damages and costs on affirmance

Where a judgment is affirmed by the Supreme Court or a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and single or double costs.

28 U.S.C. § 2106 Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify,vacate, set aside or reverse any judgment, decree,or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be justified under the circumstances.

FED. R. APP. PROC. 38 Damages for Delay

If a court of appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

FED. R. CIV. PROC. 77(a) District Courts Always Open

The district courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

STATEMENT OF THE CASE

This civil rights case was initiated on September 8, 1986 against twenty (20) named individuals and Brazos County, Texas. The case was dismissed by way of summary proceedings in the trial court without going to trial on any of the several claims presented in the complaint. [App. H, infra]. Petitioner's pro se appeal to the United States Court of Appeals for the Fifth Circuit was dismissed in the following language:

> Roland Lee Goad invoked 42 U.S.C. §§ 1983, 1988 against multiple defendants after his incarceration for contempt of court. The district court dismissed the claims as to all defendants granting motions for summary judgment on several grounds, including judicial immunity, failure to state a claim on which relief can be granted, and failure to plead with required specificity. Goad timely appeals. Finding this appeal to be frivolous we dismiss it, prohibit further like filings except as expressly specified, and remand to the district court for imposition of monetary sanctions against Goad.

Goad v. Rollins, 921 F.2d 69, 70 (CA5 1991). [Appendix C at 4a, infra].

Mandate issued by the Clerk of the Fifth Circuit on February 11, 1991 ordered:

> Monetary sanctions are imposed against Goad in favor of all appellees in accordance with Rule 38 of the Federal Rules of Appellate Procedure. The cause is remanded to the District Court for the setting of the proper amount as to each appellee. FURTHER ORDERING that all clerks of court under the jurisdiction of this court refuse to accept any further filings from Roland Lee Goad which in any way involve the payment of a portion of his Air Force retirement benefits to his former wife unless a judge of this court or a judge of the forum district, first specifically authorizes the filing.

Page 23a of Appendix F, infra.

The District Court ordered submissions itemizing all fees and costs incurred in this action, both before the district court and the court of appeals. [App. G, infra]. The four written responses filed in the district court requested an award of $94,610.82 in fees and costs for what was described as "frivolous litigation." Mary Beth Goad had not been a party in the appellate court and did not submit an

itemized bill for her fees and costs. The district court sua sponte granted Mary Beth Goad's verbal request for a $28,000 award by explaining that the award had been made pursuant to Rule 11 and "its inherent power." [Appendix E, infra].

In a brief opposing the district court's action, we pointed out that:

(1) The remand order was apparently in conflict with Cooter & Gel v. Hartmarx Corp., 496 U.S. 384 (1990) where this Court vacated the order remanding a case under Rule 38 for imposition of sanctions by the trial court stating that neither the language of Rule 11 nor the Advisory Committee Note suggeast that the Rule could require payment for any activities outside the context of district court proceedings.

(2) Section 47 of the Judicial Code disqualified the district judge from imposing sanctions for a "frivolous appeal" from

that judge's decision in a case.

(3) The imposition of sanctions under Rule 11 of the Federal Rules of Civil Procedure was not within the mandate issued by the Fifth Circuit; and

(4) That the huge demand for $94,610.82 to be awarded to the defendants was itself a frivolous request and should provide the basis for the imposition of sanctions under Rule 11.

Defendant Rollins moved the court to strike out Petitioner's counter-motion for sanctions for failure to obtain prior permission from the court [App. K, 36a infra]. At a hearing on May 24, 1991, the district judge announced from the bench that Petitioner's counter-motion for sanctions was being stricken because no permission had been obtained from the court for such filing.

The Sanction Order [App. D]

The district court entered an order on May 24, 1991 that Petitioner pay to the named defendants $122,073.81 plus interest at the rate of 6.07% until all sums are paid. The court also ordered that the "United States of America" and all agencies and employees thereof, including, without exception, the Secretary of the Air Force, to withhold $400 per month from Petitioner's salary and deposit the same into the registry of the district court. The court also directed the clerk of the court to act as a receiver to collect such monies and to make payments from such money at periodic intervals based on affidavits to be submitted by the private attorneys representing the defendants in this case. The order fails to recite any statutory authority for the court's action, i.e., whether the money ordered to be paid is for costs in

the court of appeals or the trial court or for costs in some other tribunal. No distinction is shown in the order to show whether the award is for attorney's fees, court costs, or whatever. In a memorandum entered on June 4, 1991 the court stated that its sua sponte award of $28,000 to Mary Beth Goad had been made "pursuant to Rule 11 and its inherent power." [16a infra].

The Second Appeal

On April 30, 1992 the United States Court of Appeals for the Fifth Circuit, in a 70-word PER CURIAM order AFFIRMED the district court's $122,073.81 sanction order but ignored the issues raised in the second appeal. [App. A]. Petition for rehearing was denied on June 8, 1992 [App. B].

This Petition

We now petition this Court for a writ of certiorari to review the actions of the United States Court of Appeals for the Fifth Circuit.

UNRELATED CASES

In Goad v. United States, 661 F.Supp. 1073, 1076 (S.D.Tex. 1987) the court dismissed Petitioner's Tucker Act claim for want of subject-matter jurisdiction. The lack of jurisdiction didn't deter the court from excoriating Petitioner with a 10-page diatribe about frivolous litigation and harassing his ex-wife. On appeal to the Federal Circuit before MARKEY, Chief Judge, NEWMAN and ARCHER, Circuit Judges, PER CURIAM, it was held:

> Because the district court lacked jurisdiction over Goad's claims for declaratory relief, we vacate the grant of summary judgment, and remand to the district court with instructions to dismiss the complaint for lack of jurisdiction.

Number 87-1488, December 9, 1987, Slip Opinion at page 2. Certiorari denied. 485 U.S. 906 (1988).

In Goad v. Goad, 768 S.W.2d 356, 358 (Tex.App.-1989), cert. denied, 493 U.S.

1021 (1989) it was held that the trial court was correct in determining that it lacked subject-matter jurisdiction over Petitioner's attempt to obtain a court order quashing a writ of garnishment.

Goad v. United States, 24 Cl.Ct. 777 (1991) was decided on December 23, 1991. The case was dismissed for failure to state a claim upon which relief could be granted. A timely appeal has been perfected to the Federal Circuit, Number 92-5053. Briefing was completed on May 5, 1992. Whatever the action taken in the Federal Circuit, that case will surely be brought to this Court for review.

NOTE: These unrelated cases are mentioned in this petition for the purpose of showing that Mary Beth Goad's 'ownership' of Petitioner's Air Force 'retirement benefits' is not an issue in this civil rights case.

REASONS FOR GRANTING THE WRIT

First Reason:

A Federal District Court entered a final order dismissing Petitioner's civil rights action [26a]. Petitioner exercised his statutory right to seek appellate review of that decision, 28 U.S.C. § 1291. In the Court of Appeals the case was dismissed without considering any of the issues presented in Petitioner's brief to the court. "Finding this appeal to be frivolous we dismiss it, prohibit further like filings except as expressly specified, and remand to the district court for imposition of monetary sanctions against Goad." [5a].

If the record does not present any question of law for the revision of the appellate court, the judgment below must be affirmed, but the cause cannot be dismissed. The Eutaw, 12 Wall. (79 U.S.) 136, 141 (1871); 5 C.J.S. Appeal & Error, § 1374e at 479 (1958).

A dismissal implies that there was no right to an appeal in the first instance. Bosworth v. Terminal R. Ass'n, 174 U.S. 182, 185 (1899). When an appeal is dismissed the decree or order appealed from has been described as becoming final, as being left in full force, or as being revitalized and reinstated. The cause stands in the trial court as though no appeal has been taken, and the parties are left where they were before the appeal was instituted. See generally: 36 C.J.S. Federal Courts § 296(22) at 1083 (1960) & 5 C.J.S. Appeal & Error §§ 1384 & 1386 (1958).

"Where a judgment is affirmed ... the court in its discretion may adjudge to the prevailing party just damages for his delay, and single or double costs." 28 U.S.C. § 1912. A dismissal is not an affirmance.

"[A]n appeal on a matter of law is frivolous where '[none] of the legal points

[are] arguable on their merits.'" Neitzke v. Williams, 490 U.S. 319, 325 (1989), citing Anders v. California, 386 U.S. 738, 744 (1967).

Clearly this civil rights case has nothing to do with Mary Beth Goad's claim of 'ownership' of a portion of Petitioner's military pay. In fact, Mary Beth Goad was not a party to the first appeal of this case. The order dismissing the first appeal [4a] had nothing to do with any of the legal issues raised in the case.

Because effective appellate review has not been accorded in this case, this Court should grant the writ of certiorari and in the exercise of its power to "require such further proceedings to be had as may be just under the circumstances," 28 U.S.C. § 2106, vacate the judgments of the court of appeals and remand this case to it for further consideration.

Second Reason:

Mary Beth Goad was not a party in the first appeal of this case and her right to receive payment of a portion of Petitioner's pay was not an issue before the district court or the court of appeals. However this did not deter the court of appeals from asserting that "This is the sixth lawsuit filed by Goad relating to the military benefits." [6a]. This action violates the long-standing rule that "A judgment to be conclusive upon the parties to the litigation, must be responsive to the matters controverted." Hovey v. Elliott, 167 U.S. 409, 445-6 (1897); Reynolds v. Stockton, 140 U.S. 254, 258 (1891). "A decree must relate specifically and exclusively to the pleadings and proof." United Transportation Union v. State Bar of Michigan, 401 U.S. 576, 581 (1971). This civil rights suit is the first and only case filed by Petitioner on this subject.

Other Reasons:

When a United States court of appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision, the Court, in its discretion, may review the lower court's action by writ of certiorari. [Rule 10.1(a)].

If the case at bench is not a proper one for the exercise of this Court's authority under this Rule, it would be difficult to imagine a case that would fill the requirement. Here are some reasons:

(a) Ordering the "clerks of court" not to accept for filing certain legal papers from Petitioner unless approved in advance by a federal judge violates Section 452 of the Judicial Code which states that all courts of the United States shall be deemed open for the purpose of filing proper

papers. The order also violates Rule 77(a) of the Federal Rules of Civil Procedure mandating that "The district courts shall be deemed always open for the purpose of filing any pleading or other proper paper." In Glass v. Glass, 826 S.W.2d 683, 687 (Tex. App.-1992) a similar order was found to violate the "open courts" provision of the Texas Constitution. Petitioner's right to petition for redress of grievances has been seriously impaired by this order. No federal judge has the authority to review a citizen's legal papers before they have been submitted to the clerk for filing. Federal courts are barred by the case-or-controversy requirement from deciding "abstract, hypothetical or contingent questions." Muskrat v. United States, 219 U.S. 346, 362 (1911).

(b) Petitioner was represented by counsel during most of the proceedings in the district court [20a], and the case was dismissed

on February 22, 1990 without so much as a hint that the suit had been instituted or conducted in any manner requiring that sanctions be imposed. No cross-appeal was filed. After remand from the Fifth Circuit, the district court re-opened the case and ordered Petitioner to pay $122,073.81 for "frivolous litigation." The district judge assessed the total amount requested for attorneys' fees and costs incurred in all actions back to year one, including some proceedings in state court [17a]. Its order made no findings of fact, nor did it indicate which statutory basis, if any, it chose for its authority to impose these sanctions. [12a]. The court's action, in this respect, violates a whole host of precedents in this Court and in the Fifth Circuit, c.f., e.g., Browning v. Kramer, 931 F.2d 340, 343 (CA5 1991).

(c) A judgment does not acquire any extra-territorial effect on assets located outside the state of its rendition in absence of any seizure by its courts. Hanson v. Denckla,, 357 U.S. 235, 246 (1958). Therefore, the order directing the "United States of America" to deposit $400 per month in the registry of the district court [13a] is void on its face.

(d) The district court designated the clerk to receive the monies that are to be deducted from Petitioner's military pay [14a]. This action is proscribed by Section 957 of the Judicial Code allowing such appointments only in special circumstances to be recited in the order of appointment.

There are several other reasons why a writ of certiorari should issue to review this case, but enumerating them all in this petition would amount to over-kill.

We would be remiss if we did not again mention Section 47 of the Judicial Code. In Section 47, which is part of the chapter of the Judicial Code entitled "Courts of Appeals," and which itself is entitled "Disqualification of trial judge to hear appeal," it is provided: "No judge shall hear or determine an appeal from the decision of a case or issue tried by him." In the statute that established the federal courts it was provided that "no District Judge shall give a vote in any case of appeal or error from his own decision; but he may assign the reasons of such his decision." [1 Stat. 73, 75, (1789)]. See: Annotation: Construction and Application of § 47 of Judicial Code (28 USCS § 47), and Similar Predecessor Statutes, Disqualifying Judge of United States Court of Appeals From Hearing or Determining Appeal From Decision of Case or Issue Tried by Him, 13 A.L.R.Fed 855 (1972).

Where the question has arisen, the courts have furnished little analytical support to their determination of whether the statutory disqualification is mandatory or may be waived. See comments in 13 A.L.R. Fed. at 869. In the case at bench, the courts have refused to address the issue at all. However, this omission should not prevent this Court from performing its duty under article III by insuring that the Judicial Code is faithfully observed by the inferior federal courts. In this case, the courts below have so far departed from the accepted course of judicial proceedings as to call for this Court to exercise its power of supervision to review this case by way of the requested writ.

Respectfully submitted.

20 July 1992

ROLAND L. GOAD, Petitioner
310 Sara Lane
Huntsville, Texas 77340
(409) 291-2430

Opinion of the United States Court of Appeals, Fifth Circuit, entered on April 30, 1992, from which Petitioner seeks writ of certiorari in this Court. This opinion will not be published.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 91-2726
Summary Calendar

ROLAND LEE GOAD

Plaintiff-Appellant,

versus

JOHN ANDREW ROLLINS, ET AL.,

Defendant-Appellees.

Appeal from the United States District Court for the Southern District of Texas

---

(CA H 86-3433)

Before REAVLEY, DAVIS and DEMOSS, Circuit Judges.

PER CURIAM:

The district judge has ordered Roland Lee Goad to pay sanctions and costs consistent with the order of this court at 921 F.2d 69, 71. The amounts ordered were within the discretion of the district judge. Goad has no cause to object to the judge's method of execution, the withholding of $400 monthly from benefits due him from the United States Air Force. The other arguments by Goad were rejected by the prior appeal.

AFFIRMED.

Order of the United States Court of Appeals for the Fifth Circuit entered on June 8, 1992, denying Petition for Rehearing.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 91-2726

ROLAND LEE GOAD,

Plaintiff-Appellant,

versus

JOHN ANDREW ROLLINS, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Texas

---

ON PETITION FOR REHEARING

(JUNE 8, 1992)

Before, REAVLEY, DAVIS and DEMOSS, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

Opinion of the United States Court of Appeals, Fifth Circuit, entered on January 18, 1991, published in 921 F.2d 69 (CA5 1991), cert. denied, 111 S.Ct. 1684 (1991). Case appealed from Southern District of Texas, Number CA-H-86-3433.

Roland Lee Goad, Plaintiff-Appellant,

v.

John Andrew Rollins, et al., Defendants Appellees.

No. 90-2270

Summary Calendar

United States Court of Appeals, Fifth Circuit

Jan 18, 1991.

Before POLITZ, DAVIS and BARKSDALE, Circuit Judges.

POLITZ, Circuit Judge:

Roland Lee Goad invoked 42 U.S.C. §§ 1983, 1988 against multiple defendants after his incarceration for contempt of court. The district court dismissed the claims as to all defendants by granting motions for summary judgment on several grounds, including judicial immunity, failure to state a claim

on which relief can be granted, and failure to plead with the required specificity. Goad timely appeals. Finding this appeal to be frivolous we dismiss it, prohibit further like filings except as expressly specified, and remand to the district court for imposition of monetary sanctions against Goad.

Background

Roland and Mary Beth Goad were divorced in 1980. Among other things Mary Beth Goad was awarded 12/27 of Roland Lee Goad's Air Force retirement benefits. In January 1985, after refusing to pay the required portion of the retirement pay to his former wife, Goad was found to be in contempt of court and was placed in the Brazos County jail. Upon payment of $4,000 into the registry of court Goad was released in October of 1985.

The instant action is to recover actual and punitive damages for alleged violations of Goad's constitutional rights as a result of

the judgment of civil contempt and the subsequent incarceration. This is the sixth lawsuit filed by Goad relating to the military benefits. Sanctions previously have been awarded against Goad in both state and federal court as a result of his litigiousness. The state court ordered him to pay twice the costs of appeal because of his persistence in pursuing the matter in spite of adverse judicial rulings.

In 1987 Goad brought suit against the United States challenging the withholding, by the Air Force Accounting and Finance Center (AFAFC), of the portion of the payment due Mary Beth Goad. Goad v. United States, 661 F.Supp. 1073 (1987), affirmed in part, 837 F.2d 1096 (Fed.Cir.), cert. denied, 485 U.S. 906, 108 S.Ct. 1079, 99 L.Ed.2d 238 (1988). In that litigation the district court imposed monetary sanctions and forbade Goad to make any further filings

until the fine was paid, stating

> [t]his court cannot help but note and deplore the meanness of spirit with which this action is brought. Mr. Goad's persistent attempts to strip Mrs. Goad of the property granted to her by the divorce decree and to punish the AFAFC for honoring that decree can only be characterized as harassment. 661 F.Supp. at 1081.

On appeal we affirmed the imposition of sanctions. Goad, 837 F.2d at 1096.

In the case now before us, Goad named as defendants: (1) Mary Beth Goad; (2) John Rollins, Steven Haley, Pierce Stacy III, Alfred Davis, and Alfred Davis III, attorneys who represented Mrs. Goad at various times during the divorce proceedings in state court; (3) Elna Davis, an alleged coconspirator and a private individual who loaned Mrs. Goad money for legal fees; (4) Judge John Delaney, judge presiding over the contempt proceedings; (5) Allie Lewis, Bailiff to Judge Delaney; (6) Ron Miller, Sheriff of Brazos County; John Haskell (dismissed by

Goad), Leticia Wilkerson, Michael Fitzgerald, Ron Huddleston, John Godfrey, and Charles Blondeau, corrections officers, administrators, or other employees of the Brazos County sheriff's department; (8) Bill Cooley, Walter Wilcox, Billy Beard, and Milton Turner, Brazos County commissioners; and added by petition, Brazos County.

Goad alleges nine causes of action against the various defendants: (1) deprivation of liberty without due process of law; (2) deprivation of constitutional rights based on the failure of Brazos County commissioners to provide a safe and suitable jail; (3) violation of constitutional rights based on the failure of Sheriff Miller to provide a safe and suitable jail; (4) unlawful search and invasion of privacy based upon an alleged warrantless search of his personal effects by the sheriff; (5) wrongful execution, levy, and conversion; (6) malicious abuse of

civil process, conversion, and attempted extortion; (7) civil conspiracy and denial of his right to a jury trial and due process; (8) wrongful garnishment; and (9) wrongful civil proceedings and wrongful injunction. The trial court granted summary judgment in favor of all defendants and Goad timely appeals.

Analysis

In his appeal Goad asserts every conceivable challenge to the actions of the trial court. He contests everything, including the dismissal of the claims against Judge Delaney, his courtroom staff, and the corrections officials based on judicial immunity; the failure to find the actions of private attorneys to be state action; and the dismissal of counts as insufficient to support a claim of a deprivation of a constitutional right under section 1983. He even challenges the application of a local rule that views the

failure to respond to a motion for summary judgment as a representation of no opposition.

This appeal is patently frivolous and is dismissed as such. Loc.R. 42.2. The motions seeking to strike portions of Judge Delaney's brief and requesting that the court take judicial notice of adjudicative facts are denied. Goad's campaign to prevent his former wife from receiving what is rightfully hers, which succeeds only in wasting scarce judicial resources and harassing innocent citizens must cease. Toward that end, monetary sanctions will be imposed against him in favor of all appellees in accordance with Rule 38 of the Federal Rules of Appellate Procedure. We remand to the district court for the setting of the proper amount as to each appellee. We further direct all clerks of court under the jurisdiction of this court to refuse to accept any further filings

from Roland Lee Goad which in any way involve the payment of a portion of his Air Force retirement benefits to his former wife unless a judge of this court, or a judge of the forum district, first specifically authorized the filing.

APPEAL DISMISSED, Loc.R. 42.2; sanction order ENTERED; matter REMANDED for entry of further sanctions under Fed.R.App.P. 38.

Supplemental Judgment entered in the district court on May 29, 1991, imposing sanctions in the amount of $122,073.81 against Petitioner for a "frivolous appeal" and ordering the United States to withhold 400 dollars from Petitioner's pay each month until such judgment, plus interest, is satisfied; directing the clerk of court to act as receiver of such money and to periodically disburse such money to Respondents.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROLAND LEE GOAD, Plaintiff	§	
	§	Civil Action No.
v.		H-86-3433
	§	
JOHN ANDREW ROLLINS, et al., Defendants	§	

SUPPLEMENTAL JUDGMENT

The Court ORDERS and ADJUDGES that Roland Lee Goad pay the following amounts of money to defendants:

(1) To defendants Davis & Davis the sum of Seven Thousand Four Hundred Thirty Eight and 14/100 Dollars ($7,438.14);

(2) To defendants Allie W. Lewis, Ron Miller, Leticia Wilkerson, Ron Huddleston,

John Godfrey, Charles R. Blondeau, Michael A. Fitzgerald, Bill Cooley, Walter Wilcox, Billy E. Beard, Milton Turner, and Brazos County, Texas, Forty Thousand Five Hundred Fifty Three and 52/100 Dollars ($40,553.42);

(3) To defendant Elna P. Davis, Two Thousand One Hundred and no/100 Dollars ($2,100.00); and

(4) To defendants John Andrew Rollins and Steven C. Haley, Forty Three Thousand Nine Hundred Eighty Two and 15/100 Dollars ($43,982.15);

(5) To defendant Mary Beth Goad Twenty Eight Thousand and no/100 Dollars ($28,000.00); and

(6) Postjudgment interest on all such amounts at the rate of 6.07% per annum.

Until all such sums have been paid in full, the United States of America and all agencies and employees thereof, including, without limitation, the Secretary of the Air

Force, are ORDERED to withhold from all monies, including all pay and benefits of every nature, due to Roland Lee Goad (S.S. No. 462-36-8682) the sum of Four Hundred and no/100 Dollars ($400.00) per month, and to pay such monies to the Clerk of the United States District Court for the Southern District of Texas. The Clerk is ORDERED to deposit such funds in an interest bearing account. No later than June 30 and December 30 of each year, counsel for each defendant(s) named above will certify to the Clerk of the Court in writing the amount then due and owing under this Order. Within thirty (30) days thereafter the Clerk will pay to counsel for each defendant(s) the lessor of one-fifth (1/5) of the amounts held on deposit or the remaining balance due defendant(s). Upon the satisfaction of this Order as to any defendant(s), the denominator of the fraction in the previous sentence will be

reduced by one (1).

In addition to the remedy provided in the previous paragraph, defendants shall have available all other lawful remedies to satisfy this judgment.

This judgment is immediately enforceable upon entry by the Clerk.

The Clerk of the Court is ORDERED to mail a copy of this Order to the Secretary of the Air Force.

SIGNED at Houston, Texas, this the 24th day of May, 1991.

(signed)
Sim Lake
United States District Judge

Memorandum entered by the district court on June 4, 1991 explaining the basis for the sanctions entered on May 24, 1991 (App. D)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROLAND LEE GOAD, Plaintiff,	§	
	§	CIVIL ACTION NO.
v.		86-3433
	§	
JOHN ANDREW ROLLINS, et al., Defendants	§	

MEMORANDUM

At the hearing on May 24, 1991, pursuant to Rule 11 and its inherent power the Court sua sponte entered sanctions in the amount of $28,000 in favor of Defendant Mary Beth Goad against plaintiff Roland Lee Goad. This Memorandum explains in greater detail the Court's reasons for doing so.

The record of this case reflects plaintiff Goad's campaign of vexatious litigation against his former wife with respect to the share of Mr. Goad's military benefits awarded to Mrs. Goad in the divorce decree.

This action against Mary Beth Goad, her attorneys and the individuals connected with plaintiff's incarceration in the county jail for refusal to pay Ms. Goad her share of the retirement benefits is one of at least six actions filed by plaintiff Goad challenging the enforcement of the divorce decree. These actions include:

(1) an action instituted in July 1982 in the District Court of Brazos County seeking to vacate the portion of the decree pertaining to the award of a fractional interest of military retirement benefits to Mary Goad;

(2) an action challenging the Brazos County District Court's jurisdiction to hold him in contempt for refusing to pay the ordered portion of the benefits to Mary Goad. See ex parte Goad, 690 S.W. 2d 894 (Tex. 1985);

(3) an action in the Brazos County District Court urging that Mary Goad's request for direct payment of her fractional interest of the retirement benefits by the Air Force was a writ of garnishment which he sought to have quashed; and

(4) a state court action against Mrs. Goad and the Commander of the Air Force Accounting and Finance Center (AFAFC) claiming that the divorce decree did not meet federal requirements with respect

to the award of military retirement benefits.

In addition, plaintiff Goad counterclaimed in a state court case filed by Mrs. Goad against him and joined the Commander of the AFAFC as a third-party defendant in that action. Sanctions have previously been awarded against plaintiff Goad in both state and federal courts as a result of his unwarranted litigiousness with regard to the divorce decree. In Goad v. Goad, 768 S.W.2d 356 (Tex. App. -- Texarkana 1989, writ denied), cert. denied, 110 S.Ct. 722 (1990), the Texas Court of Appeals took judicial notice of plaintiff Goad's repeated unmeritorious filings and held that plaintiff Goad's persistence in prosecuting these claims despite adverse rulings warranted the assessment of sanctions in the form of twice the cost of appeal.

In 1987 Goad brought suit against the United States challenging the withholding by the AFAFC of the portion of payments due

Mary Beth Goad. Goad v. United States, 661 F. Supp. 1073 (1987), aff'd in part and vacated in part, 837 F.2d 1096 (Fed. Cir.), cert. denied, 108 S.Ct. 1079 (1988). In that lawsuit containing allegations very similar to plaintiff's earlier claims against Mrs. Goad and the AFAFC, the court found that Mr. Goad's claims were not warranted by the existing law or good faith argument for the extension of the law and were patently frivolous. Id. at 1081. The district court imposed monetary sanctions and forbade Goad from making any further filings until the fine was paid stating:

> [t]he Court cannot help but note and deplore the meanness of spirit with which this action is brought. Mr. Goad's persistent attempts to strip Mrs. Goad of the property granted to her by the divorce decree and to punish the AFAFC for honoring that decree can only be characterized as harassment.

Id. at 1081.

Despite this history of vexatious litigation and plaintiff's patently frivolous

appeal of the Court's resolution of the claims in this action, see Goad v. Rollins, 921 F.2d 69, 71 (5th Cir. 1991), at the May 24, 1991, hearing, plaintiff Goad asserted that sanctions should not be asserted against him because some of the pleadings in this action were signed by his attorney. The Court disagrees. Although the record reflects that Mr. Forrest Jackson filed pleadings on plaintiff Goad's behalf at least December 1987 through about November 1989, plaintiff Goad initially filed this lawsuit pro se in 1986 and pursued this case pro se through the appellate process after this action was dismissed by the Court's order of February 28, 1990 (Docket Entry No. 153). (See Plaintiff's Notice of Appeal, Docket Entry No. 155.) Furthermore, the Court finds that plaintiff Goad implicitly ratified Mr. Jackson's actions by retaining him to prosecute this case. As an earlier court noted, were Mr. Goad a

novice pro se litigant, his conduct might be tolerated "as the product of lack of legal sophistication ... Mr. Goad is, however, a seasoned litigant with a demonstrated facility at legal research." Goad v. United States, 661 F. Supp. at 1081 (citations omitted). Mindful that the appropriate sanction is the least severe that will serve the purposes of Rule 11 the Court awarded defendant Mary Beth Goad her costs and reasonable attorney's fees in defending this action. Boazman v. Economics Laboratories, Inc., 537 F.2d 210 (5th Cir. 1979). In light of plaintiff's unwarranted litigiousness with respect to the claims raised in this lawsuit, the Court finds these sanctions to be reasonable.

The Clerk of the Court is ORDERED to furnish a copy of this Memorandum to all parties.

SIGNED at Houston, Texas, this 31st day of May 1991.

SIM LAKE
United States District Judge

Mandate issued by the Clerk of the Court of Appeals on February 11, 1991 in the first appeal of this case.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 90-2270
Summary Calendar

D. C. Docket No. H 86 3433

ROLAND LEE GOAD, Plaintiff-Appellant,

versus

JOHN ANDREW ROLLINS, ET AL., Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Texas

Before POLITZ, DAVIS and BARKSDALE, Circuit Judges

J U D G M E N T

This cause came on to be heard on the record on appeal and was taken under submission on the briefs on file.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the appeal in this case is dismissed as frivolous. The motions seeking to strike portions

of Judge Delaney's brief and requesting that the court take judicial notice of adjudicative facts are denied. Monetary sanctions are imposed against Goad in favor of all appellees in accordance with Rule 38 of the Federal Rules of Appellate Procedure. The cause is remanded to the District Court for the setting of the proper amount as to each appellee. FURTHER ORDERING that all clerks of court under the jurisdiction of this court refuse to accept any further filings from Roland Lee Goad which in any way involve the payment of a portion of his Air Force retirement benefits to his former wife unless a judge of this court or a judge of the forum district, first specially authorizes the filing.

IT IS FURTHER ORDERED that plaintiff-appellant pay to defendant-appellees the costs on appeal to be taxed by the Clerk of this Court.

ISSUED AS MANDATE: FEB 11 1991

District Court order entered on March 5, 1991 ordering appellees to submit their itemized bill of costs and fees within 30 days and setting hearing for consideration of sanctions to be imposed pursuant to the mandate of the Fifth Circuit.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROLAND LEE GOAD, Plaintiff,	§	
	§	CIVIL ACTION NO.
v.		86-3433
	§	
JOHN ANDREW ROLLINS, et al., Defendants	§	

ORDER

The United States Court of Appeals for the Fifth Circuit has remanded this action to this Court for determination of the amount of sanctions to be imposed in favor of appellees against plaintiff-appellant Roland Lee Goad. To assist the Court counsel for appellees are ORDERED to file within 30 days from the entry of this Order an affidavit itemizing all fees and costs incurred in this action, both before this Court and the Court

of Appeals. At the same time appellees may file any memorandum to assist the Court in determining the appropriate sanctions. Goad may file responses to appellees' affidavit and memorandum within 30 days from the receipt thereof. The Court will hold a hearing in this action on May 24, 1991, at 2:00 p.m., in Court Room 9-B, 9th Floor, United States Courthouse, 515 Rusk Street, Houston, Texas.

SIGNED at Houston, Texas, this 4th day of March, 1991.

(signed)
SIM LAKE
UNITED STATES DISTRICT JUDGE

Final Judgment entered in the District Court on February 28, 1990 which dismissed the civil rights action. This final judgment formed the basis of the first appeal.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROLAND LEE GOAD, Plaintiff	§	
	§	Civil Action No.
v.		H-86-3433
	§	
JOHN ANDREW ROLLINS, Defendant.	§	

FINAL JUDGMENT

In accordance with the Court's Order, this action is DISMISSED, and all costs are adjudged against plaintiff.

This is a FINAL JUDGMENT.

SIGNED at Houston, Texas this 22nd day of February 1990.

(signed)
SIM LAKE
UNITED STATES DISTRICT JUDGE

Final Order entered by the District Court on February 28, 1990 which was the basis of the first appeal.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROLAND LEE GOAD, Plaintiff,	§	
	§	CIVIL ACTION NO.
v.	§	H-86-3433
JOHN ANDREW ROLLINS, Defendant	§	

ORDER

This action arises from the plaintiff's incarceration for civil contempt in the Brazos County Jail. Plaintiff has sued the defendants under 42 U.S.C. §§ 1983 and 1988 for alleged violations of plaintiff's constitutional rights stemming from his incarceration. Plaintiff has also asserted related pendent state law claims against the defendants. Plaintiff's Amended Petition (Docket Entry No. 94) alleges nine Causes of Action: (1) deprivation of liberty without due process and the common law tort of false impri-

sonment, naming Judge Delaney, Lewis, Miller, Wilkerson, Huddleston, Godfrey, Haskell amd Fitzgerald as defendants; (2) cruel and unusual punishment, denial of equal protection, and deprivation of his First, Fourth, Fifth, Eighth and Fourteenth Amendment rights based upon the Brazos County Commissioner's failure to provide a safe and suitable jail, naming Cooley, Wilcox, Beard and Turner as defendants; (3) violation of the same constitutional rights based upon the failure of the Brazos County Sheriff to maintain a safe and suitable jail, naming Miller as defendant; (4) unlawful search and invasion of privacy based upon the defendant sheriffs' and defendant jailers' search of his private papers and other personal effects without a warrant or probable cause, naming Miller, Godfrey, and Rollins as defendants; (5) wrongful execution, levy and conversion, naming Miller, Blondeau, and Rollins as defendants; (6) malicious

abuse of civil process, conversion, and attempted extortion, naming Rollins, Haley and Mrs. Goad as defendants; (7) civil conspiracy and denial of his right to jury trial and due process, naming Delaney, Rollins, Haley, and Mrs. Goad as defendants; malicious abuse of civil process and wrongful garnishment, naming Rollins and Haley as defendants; and (9) wrongful civil proceedings and wrongful injunction, naming Rollins, Mrs. Goad, Stacy, Alfred Davis, Alfred Davis III, and Elna P. Davis as defendants. Although the complaint also names Brazos County as a defendant and designates Judge Holmgreen to be served with process, it does not allege an independent cause of action against the County. The Court therefore assumes that plaintiff has sued the County for the acts of its employees, as alleged in the plaintiff's 1st, 2nd, 3rd, 4th and 5th causes of action, in their official capacities. See Brandon v. Holt, 105 S.Ct. 873, 878 (1985).

The Court has dismissed the following causes of action against the defendants:

(1) In its order of May 14, 1987, the Court granted the motion of Judge Delaney for dismissal of plaintiff's 1st and 7th causes of action. (Docket Entry No. 80)

(2) In its order of May 5, 1989, the Court granted the motion of Defendants Stacy, A. Davis, and A. Davis III for summary judgment as to plaintiff's 9th cause of action. (Docket Entry No. 133)

(3) In its order of February 13, 1987, the Court granted plaintiff's motion to dismiss defendant John Haskell. (Docket Entry No. 72)

(4) In its order of October 13, 1989, (Docket Entry No. 149) for reasons stated in open court on the record the Court

(a) granted the motion of defendants Rollins and Haley for summary judgment as to plaintiff's 4th, 5th, 6th, 7th, 8th, and 9th causes of action;

(b) granted the motion of defendants Lewis, Miller, Wilkerson, Huddleston, Godfrey, Blondeau, and Fitzgerald for summary judgment as to plaintiff's 1st, 4th and 5th causes of action;

(c) granted <u>sua sponte</u> summary judgment for defendants Cooley, Wilcox, Beard, and Turner as to plaintiff's 2nd cause of action.

(d) granted sua sponte summary judgment for defendants Brazos County and Holmgreen as to plaintiff's 1st, 2nd, 3rd, 4th, and 5th causes of action; and

(e) granted sua sponte summary judgment for defendant Mrs. Goad as to plaintiff's 6th, 7th and 9th causes of action.

Before the Court is defendant Miller's motion for summary judgment as to the plaintiff's third cause of action. More than 30 days have passed since the motion was filed with the Clerk of the Court on January 10, 1990. The Clerk's records reflect that the plaintiff has not responded to this motion. Pursuant to Local Rule 6.E failure to timely respond to an opponent's motion is taken as a representation of no opposition. After careful consideration, the defendant's motion for summary judgment as to the plaintiff's third cause of action is GRANTED. Since plaintiff has no remaining causes of action against the defendants, this case is DISMISSED.

SIGNED at Houston, Texas this 22nd day of February, 1990.

(signed)
SIM LAKE
UNITED STATES DISTRICT JUDGE

The "Statement of the Issues" as they were presented to the Court of Appeals in Petitioner's Brief filed on September 20, 1991, Case No. 91-2726, from which this petition for a writ of certiorari is submitted.

STATEMENT OF THE ISSUES

[1] The district court sua sponte, and without prior motion or notice, granted summary judgment in favor of Defendants COOLEY, WILCOX, BEARD, TURNER, ELNA DAVIS, MARY GOAD and BRAZOS COUNTY. Was this error?

[2] The district court dismissed the final count in Plaintiff's complaint solely for his failure to respond to a summary judgment motion filed at the court's request. Was this error?

[3] The district court granted summary judgment in favor of Defendants LEWIS, MILLER, WILKERSON, HUDDLESTON, GODFREY, BLONDEAU and FITZGERALD on the basis of judicial immunity. Was this error?

[4] The district court granted summary judgment in favor of Defendants ROLLINS and

HALEY on the basis that no "state action" had been alleged. Was this error?

[5] The district court ordered plaintiff's pleadings stricken because he attempted to represent himself without prior permission of the court. Was this error? The district court also struck out GOAD's request for affirmative relief for the same reason. Was this error?

[6] The district court granted summary judgment in favor of Defendants A. DAVIS, A. DAVIS III, and STACY for failure to "state a cause of action" and for lack of jurisdiction. Was this error?

[7] This case was remanded to the district court for imposition of monetary sanctions in favor of each appellee under the provisions of F.R.A.P. 38. The district court awarded $122,000 in costs and fees in favor of the defendants and against the plaintiff. Was this error?

[8] The trial court ordered the United States - a non-party - to withhold $400 from Plaintiff's pay each month and deposit it in the registry of the district court until the $122,000 judgment, plus interest, had been paid in full. Was this error?

[9] The district court issued a protective order excusing Defendant Judge Delaney from being required to answer plaintiff's pending motion for partial summary judgment. Was this error?

[10] Judge Delaney was dismissed on the basis of judicial immunity without considering any of the evidence that had been submitted to the court in opposition to his motion. Was this error?

Excerpt from motion filed May 15, 1991 urging the district court to strike out Petitioner's counter-motion for sanctions. Document No. 170, Record Vol. I, p. 20.

DEFENDANTS JOHN ANDREW ROLLINS AND STEVEN C. HALEY'S OPPOSITION TO PLAINTIFF'S COUNTER-MOTION FOR SANCTIONS

* * * * *

In light of the opinion of the United States Court of Appeals for the Fifth Circuit entered January 18, 1991, directing all Clerks of the Court under the jurisdiction [of] the Fifth Circuit to refuse to accept any further filings from the Plaintiff which in any way involve the payment of a portion of his Air Force retirement benefits to his former wife without prior authorization from a Judge of the Fifth Circuit or of the forum district, Plaintiff's Counter-Motion for Sanctions should be stricken for failure to obtain the requisite authorization.

* * * * *